O. Bom. Maleki

1951

File No. Tenure Abolition

S/

Legal Department

A BRANCH

Subject:-

Opinions under the Bombay Maleki Tenure Abolition Act, 1949

P-4/(E)

O Bom Maleki Tenure Abolition

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C O N T E N T S.

Legal Department File No. O. Bom. Maleki Tenure Abolition / 1951.

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Office of the R.L.A.

Bombay Maleki Tenure Abolition Act, 1949- section 5 (1),(2) & (3).

The question raised for the R.L.A.'s consideration are

(1) Whether the applications which are not made in the prescribed form should be ~~xxjxxx~~ rejected or wheth fresh applications should be entertained in the prescribed form ; and

(2) Whether the Prant Officer can hold the inquiry fo determining the compensation.

Sub-section (1) of section 5 of the Bombay Maleki Tenu Abolition Act, 1949, provides for making an application to the Collector for compensation. Sub-section (2) provides that "Such applications shall be made in theform prescribed by Rules made under this Act within six months from the date on which this Act comes into force." "Enactments regulating the procedure in ~~C~~ourts seem usually to be imperative and not merely directory. The same imperative effect seems in general presumed to be intended even where the observance of the formalities is not a condition exacted from the parties seeking thebenefit given by theStatute but a duty imposed on a Court or a public officer in the exercise of the powers conferred on him when no general inconvenience or injustice is caused for a different construction." (See Maxwell Eighth Edition. pp. 324-325). The provisions of sub-section (2) of section 5 appear to be imperative, and an application which is not in theprescribed form can be re.ected. However, if such application substantially conforms to the prescribed form it need not be reject Consequently, all the applications filed with the Collector and only such of those applications should be scrutinized ~~conform to the prescribed form~~ which do not substantially conform to the prescribed form should be rejected, and the rest should be treated as being filed in the prescribed form. No new applications can be entertained now since theperiod of six months has already expired. The Collector's proposal in this respect would not be legally feasible .

Bombay Maleki Tenure Abolition Act, 1949, can be considered a law ejusdem generis with the Land Revenue Code. In this connection attention is invited to the preamble and the provisions of section 3 of the Act. The

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Prant officer placed in charge of one or more talukas can, therefore, in virtue of section 10 of the Land Revenue Code, exercise the powers under section 5 of the Bombay Maleki Tenure Abolition Act, 1949. However, in order to avoid any contention on this score in courts as to the competance of Prant Officers to exercise powers under section 5 of the Bombay Malaki Tenure Abolition Act, 1949, The R.D. may ask the Collector to dispose of the applications himself especially as the Act is a local Act applying only to 27 villages and the total number of applications to be dealth with by the Collector of Kaira is only # 49.

Sd. J.R.Dhurandhar.

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Remembrancer of Legal Affairs.

U.R. to R.D. No. 4810 , dated the 27th March 1951.

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In R.L.A.'s opinion No. 3164, dated 1st December 1914 it was held that under Article III of the Sanad held by Maleks the nam nakru land was to be rent free so long as it remained in the possession of the maleks and that if the land was alienated, there was nothing to prevent Government from imposing assesement on theland. This position has not been changed by the provisions of the Bombay Maleki Tenure Abolition Act, 1949. Section 3(2) of the Act merely saves the right of a malek to hold nakru land as being exempt from land revenue. If a nekru land is alienated, it loses its character as such land and becomes subject to assessment. The saving in section 3(2) is restricted to the nakru land in possession of the malek as such nakru land and does not apply to such lands which were alienated. The view taken by the Collector is correct.

Sd/ J.R.Dhurandhar.
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Remembrancer of Legal Affairs.

U.R. to R. D . No. 9365 , dated the 14th June 1951.

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